Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

COMMENTS OF VOICESTREAM WIRELESS CORPORATION

Brian T. O'Connor, Vice President
Legislative and Regulatory Affairs

Robert Calaff, Corporate Counsel
Governmental and Regulatory Affairs

Dan Menser, Corporate Counsel
Regulatory Affairs

401 9th Street, N.W., Suite 550
Washington, D.C. 20004
202-654-5900

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Summary of Comments

VoiceStream makes five points in its comments submitted in the important intercarrier compensation rulemaking proceeding.

1. The Commission should establish a Federal regulatory framework for LEC-CMRS interconnection by requiring that all LEC-CMRS interconnection contracts be filed promptly with it. Congress amended the Communications Act to empower the Commission to establish a "Federal regulatory framework" for all CMRS, including all aspects of LEC-CMRS interconnection. The Commission has not exercised this authority to date, instead delegating such authority to the states using a process designed for LEC-LEC interconnection. Experience has shown that this state-by-state process is not workable and does not achieve the Federal framework that Congress wanted established for LEC-CMRS interconnection. States do not have the statutory authority to regulate CMRS interconnection rates. ILECs have also used the process to force CMRS carriers to re-litigate the identical issues in numerous states, and states have inconsistently interpreted Commission rules. Given the congressional directive that the Commission "promote" LEC-CMRS interconnection because such interconnection "serves to enhance competition and advance a seamless national network," the Commission should establish a truly Federal regime for LEC-CMRS interconnection. Specifically, it should require that all LEC-CMRS interconnection contracts be promptly filed with it rather than with the states, and it should be prepared to adjudicate any Federal issues between LECs and CMRS carriers.

2. Bill-and-keep should be an efficient compensation model for LEC-CMRS interconnection. The Commission recently noted that bill-and-keep has "very fundamental advantages over a CPNP regime." The wireless industry will be very interested in understanding all the

details and the implications of the actual regime proposed by the Commission. VoiceStream does explain how adoption of bill-and-keep would enable all carriers to reduce considerably CPNP ("calling party's network pays") transaction costs. Consumers benefit when service providers can reduce their operating costs, because intense competition in the CMRS market ensures that costs savings will be passed through to consumers.

3. The Commission has the legal authority to adopt bill-and-keep for LEC-CMRS interconnection. Regardless of the Commission's authority under Section 252(d) to adopt bill-and-keep for LEC-LEC interconnection, as the Commission has itself recognized, the Commission possesses "independent authority" to adopt bill-and-keep for LEC-CMRS interconnection.

4. The Commission should adopt for CMRS a permissive Access charge tariffing regime similar to what it has adopted for other competitive carriers. IXCs do not compensate CMRS carriers when they use CMRS networks to terminate their long distance traffic. Of course, IXCs do not have the right to use CMRS networks for free — especially given that the arrangement between CMRS and IXCs is largely a one-way, non-reciprocal arrangement. Moreover, CMRS providers cannot meaningfully compete in the local telecommunications market if LECs receive Access charges for call termination, while CMRS carriers receive nothing for performing the same service. VoiceStream proposes a non-intrusive regulatory regime for CMRS Access charges that would remove the inequities and market distortions caused by the current regime.

5. The Commission should act one step at a time rather can defer any meaningful reform pending development of the elusive perfect solution. In other contexts involving complex subjects, the Commission has recognized that it should not permit itself to become "gridlocked into inactivity" by a search for a perfect solution: "It is preferable and more reasonable to take several steps in the right direction . . . than to remain frozen with indecision because a perfect, ultimate

solution remains outside our grasp." The Commission should adopt this common sense approach here. Appellate courts have already affirmed the Commission's plenary authority over LEC-CMRS interconnection, and the Commission should begin to exercise this authority so as to achieve the "Federal regulatory framework" that Congress has commanded for the competitive CMRS industry.

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VoiceStream Wireless Corporation ("VoiceStream") hereby responds to the Commission's invitation to discuss the feasibility of bill-and-keep for the interconnection of local telecommunications traffic.[1] VoiceStream supports the bill-and-keep concept because it should be the most efficient approach to intercarrier compensation, at least between local exchange carriers ("LECs") and providers of commercial mobile radio service ("CMRS"). However, regardless of the reforms that it may adopt, the Commission should establish a Federal regulatory framework for CMRS, including LEC-CMRS interconnection, so as to discharge congressional directives.

I. The Commission Should Establish a Federal Regulatory Regime for LEC-CMRS Interconnection by Exercising Its Existing Authority and by Requiring All LEC-CMRS Interconnection Contracts Be Filed With the Commission

The Commission seeks comment on "the balance of responsibilities between the Commission and the states" with respect to any intercarrier compensation arrangement.[2] It also seeks comment on "Commission's authority over LEC-CMRS interconnection and, specifically, on the

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[1] *See Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, *Notice of Proposed Rulemaking,* FCC 01-132 (April 27, 2001), *summarized in* 66 Fed. Reg. 28410 (May 23, 2001)("*Intercarrier Compensation NPRM*").

[2] *Id.* at ¶ 122.

issues raised by the two CTIA letters," in which CTIA demonstrated that the Commission possesses plenary jurisdiction over LEC-CMRS interconnection.[3]

Congress has already answered the questions posed. While it has decided largely to maintain the dual, federal-state regulatory regime for most LEC-LEC interconnection,[4] Congress deliberately chose "a Federal regulatory framework" for all CMRS. It specifically directed the Commission to "promote" LEC-CMRS interconnection because such interconnection "serves to enhance competition and advance a seamless national network,"[5] and it gave the Commission the statutory authority to discharge the congressional directives. VoiceStream urges the Commission to recognize the "Federal regulatory framework" and deem LEC-CMRS interconnection under exclusive Commission jurisdiction, by requiring that all LEC-CMRS interconnection contracts be filed with it and by resolving any disputes that may arise in LEC-CMRS interconnection.

CMRS providers and LECs both provide local exchange services, but there are several fundamental differences between mobile wireless services and fixed landline services. The market for mobile services is far more competitive than the market for local landline services. LEC exchange areas are small and the vast majority of these exchanges are located entirely within a single state. In contrast, most CMRS carriers offer their customers large, multi-state local calling areas, and with certain "one rate" plans, the outbound local calling area encompasses the entire United States. In addition, a mobile customer with a telephone number rated in Washington, D.C., for example, may answer anywhere in the country what appears to the caller (and the originating network) to be a local land-to-mobile call. As Congress has aptly noted, "mobile

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[3] *Id.* at ¶ 78 and n.108.

[4] Congress did give the FCC the authority to adopt national rules for LEC-LEC interconnection. *See, e.g.,* 47 U.S.C. §§ 251(d)(1); 201(b); *AT&T* v. *Iowa Utilities Board,* 525 U.S. 903 (1999).

[5] H.R. REP. NO. 103-111, 103d Cong., 1st Sess. 261 (1993)("House Report").

services . . . operate without regard to state lines as an integral part of the national telecommunications infrastructure."[6]

Congress determined in the Omnibus Budget Reconciliation Act of 1993 that it was necessary "to establish a *Federal regulatory framework* to govern the offering of *all* commercial mobile services."[7] This "Federal regulatory framework" was necessary not only because of the impracticality of applying state regulation to services that operate "without regard to state lines," but also to "foster the growth and development of mobile services."[8]

Congress made several major modifications to the Communications Act in order to achieve the desired Federal regulatory framework. First, it limited the authority of states over CMRS providers, by preempting states from exercising "any authority to regulate the entry of or the rates charged by any commercial mobile service."[9] Second, Congress broadened the scope of the Commission's jurisdiction by authorizing it to regulate all aspects of CMRS, including intrastate CMRS services. By exempting Section 332(c) from the scope of Section 2(b), Congress specifically excluded CMRS from the dual federal and state regime originally established to govern interstate and intrastate services.[10] Congress did not disturb this new regulatory regime for CMRS in enacting the 1996 Act.[11]

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[6] House Report at 260.

[7] H.R. CONF. REP. NO. 103-213, 103d Cong., 1st Sess. 490 (1993)(emphasis added)("Conference Report").

[8] House Report at 260.

[9] 47 U.S.C. § 332(c)(3)(A)("[N]o State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.").

[10] Ordinarily, Section 2(b) "fences off from FCC reach or regulation intrastate matters — indeed, including matters 'in connection with' intrastate service." *Louisiana Public Service Comm'n* v. *FCC,* 476 U.S. 355, 370 (1986).

[11] *See* 47 U.S.C. § 251(i); Telecommunications Act of 1996, § 601(c)(1); H.R. CONF. REP. NO. 458, 104th Cong., 1st Sess. 123 (1996). In fact, Congress clarified in the 1996 Act that CMRS providers are not LECs and, therefore, not subject to the interconnection obligations contained in Section 251(b) applicable to LECs only. *See* 47 U.S.C. §§ 153(26), 252(b). Indeed, CMRS carriers have no statutory obligation under Section 252(b)(5) to pay reciprocal

Interconnection is a core element of this Federal regulatory framework. Indeed, Congress specifically stated that the right of CMRS carriers to interconnect with LECs is "an important one which *the Commission shall seek to promote*" since such interconnection "serves to enhance competition and advance a seamless *national* network."[12] In this regard, Congress enacted Section 332(c)(1)(B), which directs the Commission to order a LEC to provide interconnection "pursuant to the provisions of section 201 of the Act."[13] Section 201(b), in turn, provides that a LEC's "charges, practices, classifications, and regulations for and in connection with such communications service [*e.g.,* CMRS interconnection] shall be just and reasonable."[14]

The Commission has recently noted that its authority under Sections 332(c)(1) and 201 "is quite broad."[15] Thus, for example, Section 201 empowers the Commission to establish the rate that a LEC charges a CMRS carrier for interconnection — and, with the corresponding exemption from Section 2(b), the Commission can set LEC rates and order reasonable interconnection for all aspects of LEC-CMRS interconnection, including interconnection involving intrastate traffic.

The Commission has not established the "Federal regulatory framework" that Congress expected it would adopt for LEC-CMRS interconnection. While it has adopted certain national interconnection rules (generally, the same Part 51 rules applicable to LEC-LEC interconnection), the Commission has largely delegated to the states implementation of these rules, using the Sections 251/252 regime designed for LEC-LEC interconnection. VoiceStream submits that such

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compensation to LECs, because this duty extends to LECs only. This further suggests that Congress did not envision that LEC-CMRS interconnection would be subjected to the Section 251/252 process.

[12] House Report at 261 (emphasis added).

[13] 47 U.S.C. § 332(c)(1)(B).

[14] 47 U.S.C. § 201(b).

state delegation to implement LEC-CMRS interconnection is inconsistent with the congressional directive that the Commission "promote" LEC-CMRS interconnection because such interconnection "serves to enhance competition and advance a seamless national network."[16]

Experience has established that the Section 251/252 process is not workable and does not achieve the "Federal regulatory framework" that Congress wanted established for LEC-CMRS interconnection. A central point in any interconnection agreement is the rate each carrier pays the other carrier for call termination. State regulators cannot adjudicate the rates CMRS carriers charge for call termination because Section 332(c)(3) completely preempts states from having "any authority to regulate . . . the rates charged by" a CMRS provider.[17] States and industry have been able to avoid this major jurisdictional defect in the current process because CMRS carriers have largely chosen to use the Commission's symmetrical reciprocal compensation alternative, whereby a CMRS provider receives for call termination the same rate that the LEC charges it for call termination.[18] However, given the Commission's recent confirmation that CMRS carriers may recover in reciprocal compensation all their traffic sensitive costs of call termination,[19] and given recent studies confirming that the costs of call termination over CMRS networks are sig-

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[15] Brief of Respondents, No. 00-1376, at 36 (Feb. 14, 2001), *Qwest* v. *FCC,* 252 F.3d 462 (D.C. Cir., June 15, 2001).

[16] House Report at 261.

[17] 47 U.S.C. § 332(c)(3)(A). Importantly, this statute does not distinguish between the retail prices a CMRS provider charges its own customers and the wholesale prices it charges another carrier. Indeed, the FCC has repeatedly acknowledged that Section 332(c)(3) "clearly preempt[s] state regulation of the rates for [CMRS] interconnection." *CMRS Interconnection Obligations,* 9 FCC Rcd 5408, 5463 ¶ 131 (1994). *See also Second CMRS Report,* 9 FCC Rcd 1411, 1500 ¶ 237 (1994).

[18] *See* 47 C.F.R. § 51.711(a). The FCC asks whether it should eliminate the symmetry presumption. *See Intercarrier NPRM* at ¶ 106. The FCC has already answered this question: "Apart from our reluctance to require new entrants to perform cost studies, it is entirely impracticable, if not impossible, for regulators to set different intercarrier compensation rates for each individual carrier, and those rates still might fail to reflect a carrier's costs as, for example, the nature of its customer base evolves." *Intercarrier Compensation for ISP-Bound Traffic Order,* CC Docket No. 99-68, FCC 01-131, ¶ 76 (April 27, 2001)("*ISP-Bound Traffic Order*").

nificantly higher than LEC call termination costs,[20] the Commission should expect CMRS carriers to begin seeking reciprocal compensation based on their own costs of call termination rather than continue to use LEC rates as a surrogate. State regulators are precluded by statute from adjudicating these CMRS rate issues.[21]

There are also more practical problems with the Commission's current approach of relying on states to implement LEC-CMRS interconnection. For example, VoiceStream currently operates in over 44 states, and an incumbent LEC, Verizon Communications, due to a series of corporate acquisitions, most notably GTE, has a presence in many of these states. A Federal regulatory framework and administrative efficiency suggest that Verizon and VoiceStream execute one interconnection agreement governing all of their interconnection arrangements. However, under the Sections 251/252 process, the two carriers must instead execute, file, manage and maintain separate interconnection agreements in over 23 states and the District of Columbia. This state-by-state process imposes sizable transaction costs (on carriers and state regulators) without providing any cognizable public benefit.[22]

The transaction costs become significantly higher if a CMRS carrier and LEC cannot agree over all interconnection terms. For example, although Commission rules specify clearly

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[19] *See Intercarrier Compensation NPRM* at ¶ 104. *See also* Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, and Dorothy T. Attwood, Chief, Common Carrier Bureau, to Charles McKee, Sprint PCS, DA 01-1201 (May 9, 2001).

[20] For example, Sprint PCS has submitted a cost study demonstrating that its additional costs of call termination in Florida are $0.066 per minute. *See* Florida Public Service Commission, Prehearing Order, Docket No. 000761-TP, at 5 (Dec. 29, 2000), *available at* www.psc.state.fl.us/dockets/documents/00/16479-00.html.

[21] *See* 47 U.S.C. § 332(c)(3)(A). This statute would further prohibit a state regulator from imposing bill-and-keep on a CMRS carrier wanting to charge cost-based rates for call termination.

[22] To its credit, Verizon has agreed to negotiate a base agreement in many of the former GTE exchanges. However, the parties must still execute contracts for and file them in numerous states, requiring each of the state commissions to review and approve these contracts. This time-consuming process delays cost savings to CMRS carriers and involves substantial carrier resources to obtain and implement these new agreements. Administrative efficiency certainly is not promoted under the current arrangement.

that a CMRS carrier is entitled to symmetrical compensation based on an incumbent LEC's tandem rate if its mobile switch serves "a geographic area comparable to the area served by the incumbent LEC's tandem switch,"[23] U S WEST (later, Qwest) decided it was not going to comply with this Commission rule, forcing arbitration of the identical issue in a dozen or so states. Individual states reached different decisions in applying the same Commission rule, and Qwest then chose to appeal to the courts state commission decisions rejecting its arguments. The Commission recently confirmed that Qwest's position was "inconsistent with our rule."[24] Had Qwest not maintained this unlawful position, CMRS carriers, state regulators, and courts would have avoided expending thousands of hours and millions of dollars litigating this duplicative exercise. Cost savings were delayed for the carriers, and in turn, for the consumers.

A Federal regulatory framework is not achieved when states make different decisions in applying the same Commission rule.[25]

Early indications are that this duplicative and unnecessary litigation is about to repeat itself, except this time involving asymmetrical compensation. Commission rules clearly specify that a CMRS carrier, upon presentation of an adequate cost study, can recover all of its additional costs of call termination.[26] Sprint PCS submitted such a cost study in Florida in an arbitration involving BellSouth. BellSouth's response: "Sprint PCS should not receive asymmetrical reciprocal compensation for terminating BellSouth-originated calls" because "as a matter of public

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[23] 47 C.F.R. § 51.711(a)(3).

[24] *See Intercarrier Compensation NPRM* at n.173.

[25] VoiceStream is, therefore, perplexed by the FCC statement that past inconsistent state commission decisions may "suggest" that it consider giving states "greater flexibility" in applying national rules. *Id.* Disparate state decisions do not promote the congressional directive for a "Federal regulatory framework" for LEC-CMRS interconnection. Moreover, it is difficult to justify a process where by a particular mobile switching center, insofar as it provides service in one state, is "functionally equivalent" to an ILEC tandem while, while the very same MSC, insofar as it provides service in a different state, is deemed to be "functionally equivalent" to an ILEC end office.

[26] *See, e.g.,* 47 C.F.R. § 51.711(b); *Intercarrier Compensation NPRM* at ¶ 104.

policy, . . . asymmetrical reciprocal compensation . . . would be inappropriate."[27] Despite the clarity of Commission rules on the subject, the Florida Commission staff's response to the dispute was: "Staff takes no position at this time."[28]

State commissions should not be compelled to divine Commission intent in interpreting and applying Commission rules. Incumbent LECs should not be permitted to use the states and the Section 251/252 process to delay the provision of reasonable interconnection consistent with Commission rules. In addition, CMRS providers should not be subjected to ILEC threats that if they do not accede to its demands, the ILEC will litigate the issue in every state in which it operates. Forcing CMRS carriers to re-litigate the identical issue in numerous states only to achieve inconsistent results does not promote the "Federal regulatory framework" that Congress envisioned for the CMRS industry that operates "without regard to state lines as an integral part of the national telecommunications infrastructure."[29] One Commission decision on a particular subject involving LEC-CMRS interconnection is needed to resolve the issue nationally, for all carriers.

The Commission states in the *NPRM* that it is "cognizant of the need to cooperate with the states, and the importance of not interfering unnecessarily with legitimate state policies."[30] This may be a legitimate policy for LEC-LEC interconnection, where local traffic almost always involves intrastate calls only and where Congress has determined to retain the Section 2(b) fence to ensure a role for the states. But this policy has no applicability to LEC-CMRS interconnection, given that local traffic often crosses state boundaries, given Congress' decision to establish

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[27] BellSouth Telecommunications Pre-Hearing Statement, Docket No. 000761-TP, at 2-3 and 4 (Dec. 11, 2000).

[28] Staff's Prehearing Statement, Docket No. 000761-TP, at 1, 2 (Dec. 11, 2000).

[29] House Report at 260.

[30] *Intercarrier Compensation NPRM* at ¶ 122.

"a Federal regulatory framework" for CMRS by removing the Section 2(b) fence, and given Congress' directive that the Commission promote LEC-CMRS interconnection in order to achieve this national objective.

Regardless of the reforms that it may adopt in this proceeding, the Commission should exercise its primacy over LEC-CMRS interconnection by establishing a truly "Federal regulatory framework" for such interconnection. Specifically, the Commission should require that all LEC-CMRS interconnection contracts be filed with it rather than with individual states. These agreements should be filed promptly for full public disclosure. There would be numerous advantages to such an approach, including:

- Parties to an interconnection agreement would need to execute and file only one contract rather than multiple contracts required today (*e.g.,* Verizon and VoiceStream would have one contract rather than the 24 needed today), thereby reducing transaction costs of the two involved carriers.[31]
- Access to interconnection agreements would be greatly facilitated as carriers would no longer need to hunt for agreements executed by other CMRS operators. By filing all LEC-CMRS interconnection agreements with the Commission, agreements involving other parties could be obtained readily and easily. Easy access to this information would considerably facilitate negotiations of other LEC-CMRS interconnection agreements (and help equalize the bargaining position of LECs and CMRS carriers).
- Submitting agreements with the Commission would relieve the states of engaging in the time-consuming but redundant function of reviewing agreements between the same LECs and up to seven CMRS providers, thereby enabling state commissions to focus on LEC-LEC interconnection.
- The Commission should arbitrate any disputes in LEC-CMRS interconnection. Unlike the current regime, where state commission decisions are limited to their state boundaries, a Commission decision would have national effect — directly impacting the two involved carriers in all states but having a precedential effect for all LEC-CMRS interconnection, including interconnection between other LECs and other CMRS providers.

[31] Incumbent LECs often have in-house counsel and local counsel on retainer in each state they operate. In contrast, CMRS carriers invariably must hire outside counsel in each state to handle these state regulatory issues, even though the LEC-CMRS interconnection often involves regional, multi-state interconnection. This situation needlessly increases the operating costs of CMRS carriers, and gives ILECs a substantial economic leverage in negotiations.

- Commission decisionmaking would facilitate uniform interconnection and regulatory parity, and would further eliminate the current situation where the same LECs and CMRS providers are subject to inconsistent requirements depending on the state involved, caused by differing state interpretations of the same Commission rules.
- With Commission decisionmaking, ILECs would also lose the considerable leverage they have possessed in past LEC-CMRS negotiations, whereby they threaten to re-litigate the identical issue in every state where the two parties interconnect. In the past, CMRS carriers have often had to succumb to ILEC demands, not because the ILEC demands were reasonable, but rather because they could not generate sufficient resources to re-litigate the same issue in multiple states. Having only one forum would greatly facilitate the adoption of one set of interconnection rules applicable to all, facilitating the national interconnection regime that Congress sought for the competitive CMRS industry.

Only through more active Commission intervention will the "Federal regulatory framework" that Congress desired for the competitive CMRS industry be fully achieved.

II. Bill-and-Keep Is an Efficient Compensation Model for LEC-CMRS Interconnection

The Commission noted only four months ago that "a bill-and-keep regime has very fundamental advantages over a CPNP regime."[32] VoiceStream will leave to economists the debate over which compensation arrangement — calling party's network pays ("CPNP") *vs*. bill-and-keep — is the most efficient for the telecommunications industry in general. Adoption of bill-and-keep should eliminate the market distortions and inequity inherent to the current LEC-CMRS intercarrier compensation regime and enable VoiceStream to reduce considerably its billing administrative costs. Consumers benefit when service providers can reduce their operating costs, because intense competition in the CMRS market ensures that cost savings will be passed through to consumers.

[32] *Intercarrier Compensation for ISP-Bound Traffic,* CC Docket No. 99-68, FCC 01-131, ¶ 76 (April 27, 2001) ("*ISP-Bound Traffic Order*").

It is expensive to implement and operate a CPNP regime, whereby each carrier bills other carriers for termination of local traffic. This operational expense is growing as VoiceStream continues to expand its buildout and network coverage to new areas and as traffic volumes on its network increase.

With CPNP, a carrier like VoiceStream must record all incoming calls, identify the originating carrier responsible for payment, generate bills to the originating carriers, maintain auditable records, account for unpaid or contested bills, arbitrate or litigate billing disputes. VoiceStream must also be able to reconcile bills with third parties involved in calls (*e.g.,* an ILEC performing a transit function).

Critical to generating bills for call termination is knowing the identity of the carrier originating each call, so VoiceStream knows who should receive its statements for which calls. VoiceStream receives most incoming traffic from an ILEC tandem switch over one large trunk group that may transport local calls originated anywhere in a LATA, whether by ILECs, CLECs or other CMRS providers.[33] The problem VoiceStream faces is that there is no readily available means to identify the originating carrier for incoming traffic over this large, combined trunk group. The dominant signaling technology in use today (SS7) has never been modified to identify and convey in the trunk signaling messages the carrier to be billed.[34] The ILEC performing the "transit" function (at its tandem switch) has access to this critical information, but ILECs

[33] Carriers engaged in this practice because for all involved one large trunk group is significantly more efficient and cost-effective compared to multiple small trunk groups. Where multiple ILEC Access Tandems are used to geographically divide a LATA to accommodate traffic volumes, CMRS and other carriers typically interconnect to the ILEC at each tandem. While these trunk groups carry local traffic in both directions, they may also be used to transport Access traffic terminating to the CMRS carrier from intrastate and interstate sources.

[34] Systems have been developed to record all SS7 messages in order to extract the information necessary for billing, but these systems are expensive. Meanwhile, traditional trunk usage billing systems such as CABS have not been able to keep up with technological changes. While the calling party's telephone number may have been used to determine the originating telephone company a few years ago, number portability has eliminated the linkage between a caller and an originating carrier.

have generally refused to act as billing agents for CMRS carriers — even though many ILECs have closely held agreements with independent telephone companies to bill on their behalf.[35] The lack of ready access to this essential information results in the rendering of less than perfect bills, which, in turn, generates disputes that require the dedication of yet additional resources. All of these operating costs (*e.g.,* personnel, systems purchase/maintenance; arbitration/litigation) should be avoided by adoption of bill-and-keep.

VoiceStream suspects that many ILECs will oppose bill-and-keep for LEC-CMRS interconnection using the same arguments they made five years ago: bill-and-keep is inappropriate because traffic volumes exchanged are not in perfect balance.[36] VoiceStream does not dispute that traffic balance is a relevant consideration if one accepts the theory that only the calling party benefits from calls and should accordingly pay the entire cost of a call (although even ILECs must admit that along with decreasing rates, disparities in traffic volumes are diminishing over time). However, even if one accepts this theory, traffic balance is not the only consideration that is relevant.

All available studies confirm that the additional cost of call termination is higher for CMRS networks than it is for landline LEC networks. Applying bill-and-keep in LEC-CMRS interconnection only when traffic flows are in balance— so long as symmetrical rates remains the norm — would thus result in an enormous financial windfall for LECs. Stated another way, the current CPNP regime may accurately reflect current traffic balances between LECs and CMRS carriers, but this current regime guarantees that CMRS carriers do not recover all their

[35] Should the FCC choose to maintain the CPNP compensation regime for LEC-CMRS interconnection, the FCC should immediately act to ensure that standards are developed and implemented to ensure that every carrier can identify and bill the incoming traffic it receives. This should include ruling that, if an ILEC acts as a billing agent for any telecommunications carrier (*e.g.,* an independent telephone company), it must provide the same billing function to other telecommunications carriers (*e.g.,* CMRS providers).

call termination costs, as the Commission has readily acknowledged.[37] Use of the current CPNP regime thus distorts compensation in the market for local telecommunications services, and the adoption of bill-and-keep would eliminate this market distortion and inequity.[38]

The Commission's recent confirmation that CMRS carriers may receive in reciprocal compensation all of their traffic sensitive costs of call termination should give CMRS carriers the incentive to prepare appropriate cost studies so they can recover their actual costs of termination, than relying on a LEC's lower rate as a surrogate.[39] VoiceStream has no doubt that most ILECs, upon submission of such a cost study, will eventually agree to bill-and-keep in settlement, because payment of cost-based CMRS call termination rates would invariably result in an ILEC paying to a CMRS provider more than it receives from the CMRS provider in call termination. It is not apparent how the public interest is served by effectively compelling CMRS carriers to undertake costly, LATA-by-LATA regulatory studies and resulting litigation in order to achieve bill-and-keep when the Commission can achieve the same result simply through the stroke of its pen.

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[36] *See, e.g., First Local Compensation Order,* 11 FCC Rcd 15499, 16053 ¶ 1109 (1996).

[37] *See Intercarrier Compensation NPRM* at n.54.

[38] VoiceStream cannot agree with the FCC's suggestion that there "may be less of an imperative to apply a new regime to LEC-CMRS interconnection." *See Intercarrier Compensation NPRM* at ¶ 65. The current CPNP arrangement is inequitable because CMRS carriers do not recover all their call termination costs. Moreover, the FCC cannot conclude that "significant problems do not exist" because of the absence of "complaints against CMRS carriers for excessive termination rates" (*id.* at ¶ 65) because given the presumptive symmetrical approach that the FCC has adopted, CMRS carriers have effectively been operating pursuant to a regulated rate cap.

[39] VoiceStream uses the word "should" because the cost of undertaking a cost study will be sizable for a competitive carrier that is not equipped to prepare regulatory cost studies. In addition, a CMRS carrier must factor in the cost of litigation, as it is almost certain that an ILEC will at least initially contest any cost study submitted, regard-

III. The Commission Has the Legal Authority to Adopt, and Should Adopt, Bill-and-Keep for LEC-CMRS Interconnection

Bill-and-keep should be an efficient method of compensation for LEC-CMRS interconnection. The Commission asks whether it possesses the legal authority to replace the existing CPNP regime with bill-and-keep for all intercarrier compensation, including LEC-CMRS interconnection.[40] This is an appropriate inquiry with respect to non-CMRS interconnection because there is a substantial question whether the Commission can order mandatory bill-and-keep under Section 252(d), given the statutory language that reciprocal compensation does not "preclude arrangements . . . that waive mutual recovery (such as bill-and-keep arrangements)."[41]

The simple response is that whatever limitations Section 252(d) may impose on the Commission's ability to impose mandatory bill-and-keep for LEC-LEC interconnection, this limitation has no relevance to the Commission's authority to impose bill-and-keep for LEC-CMRS interconnection. As discussed above and as the Commission itself recognized in its *NPRM*, Sections 201 and 332(c) give the Commission "independent authority" to promulgate rules governing all aspects of LEC-CMRS interconnection.[42] Congress made this point clear in Section 251(i) of the 1996 Act, where it provided that "[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201 of this title."[43] The Conference Report states in this regard:

> New subsection 251(i) makes clear the conferees' intent that the provision of new section 251 are *in addition to, and in no way limit or affect*, the Commission's

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less of its quality. One point is clear, however. ILECs cannot use their ordinary tactic of re-litigating the same issue in every state because states have no authority over CMRS interconnection rates. *See* 47 U.S.C. § 332(c)(3)(A).

[40] *See Intercarrier Compensation NPRM* at ¶¶ 85 and 121.

[41] 47 U.S.C. § 252(d)(2)(B)(i).

[42] *See Intercarrier Compensation NPRM* at ¶ 82.

[43] 47 U.S.C. 251(i).

> existing authority regarding interconnection under section 201 of the Communications Act.[44]

Indeed, the Commission recently exercised its authority under Section 201 to impose a bill-and-keep regime for certain ISP-bound traffic.[45]

In summary, the Commission unquestionably possesses the legal authority to impose bill-and-keep for all LEC-CMRS interconnection. The Commission should impose a bill-and-keep regime because of the enormous efficiencies and cost savings that it could bring to competitive markets.

IV. The Commission Should Permit CMRS Carriers to Recover Costs Incurred in Terminating IXC Calls by Permitting the Filing of CMRS Access Tariffs

The Commission asks whether CMRS carriers are "entitled to receive Access charges, or some additional compensation, for interexchange traffic terminating on their networks."[46] The Commission may have asked the wrong question. Interexchange carriers ("IXCs") have no right to free use of CMRS networks in the termination of their long distance traffic, as the Commission has already held. The question the Commission should rather be addressing is how CMRS carriers can most efficiently recover their costs in providing exchange access to IXCs. CMRS providers cannot meaningfully compete in local telecommunications markets if LECs receive Access charges for call termination, while CMRS carriers receive nothing for performing the same service.

It is important to note at the outset that a CMRS carrier's provision of network access is fundamentally different than its interconnection for local traffic. Local interconnection generally

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[44] H.R. CONF. REP. NO. 104-458, 104th Cong., 2d Sess. 123 (1996)(emphasis added).

[45] *See ISP-Bound Traffic Order* at ¶¶ 81-82.

[46] *Intercarrier Compensation NPRM* at ¶ 94.

involves a reciprocal arrangement, with a LEC sending traffic to a CMRS carrier and a CMRS carrier, in turn, sending traffic to LECs. While traffic volumes between the two carriers may vary at different times, so do each carrier's costs of call termination and each carrier's busy hour. The arrangement is nonetheless mutual and reciprocal because each carrier sends calls to, and receives calls from, the other.

This reciprocity does not exist with interexchange traffic. CMRS carriers generally provide their own long distance services to their mobile customers (although with many retail plans, mobile customers do not pay extra for long distance). The principal exchange access function that a CMRS carrier performs for IXCs is providing terminating access so, for example, AT&T, Sprint and WorldCom customers can complete their calls to a customer served by VoiceStream or another CMRS provider.[47] The relationship between a CMRS carrier and IXCs is thus largely one-way — a non-reciprocal arrangement.

There can be no legitimate dispute over a CMRS provider's right to recover Access charges from IXCs for terminating IXC traffic.[48] The Commission recognized in 1987 that CMRS carriers are entitled to Access charges,[49] and it reaffirmed this position in 1994:

> The Commission recently determined that the CMRS marketplace is sufficiently competitive to support forbearance from a tariff filing requirement for CMRS interstate access service. It should be noted, however, that in the Interconnection

[47] A CMRS provider's provision of *originating* exchange Access is relatively rare. It occurs principally when the mobile customer dials a toll free number, when the call must be directed to the carrier chosen by the person being called, the 800 customer.

[48] The major IXC argument appears to be that there are entitled to free service because CMRS carriers recover their costs of terminating toll calls from their own practice. However, given IXC refusal to pay any Access charges, CMRS carriers have no choice but to recover their costs from their end-user customers. In essence, IXCs attempt to defend their unlawful conduct because they contravened the Act and FCC orders in the first instance.

[49] *See Need to Promote Competition and Efficient Use of Spectrum,* 2 FCC Rcd 2910, 2915 ¶ 47 (1987)("Cellular carriers and telephone companies are equally entitled to just and reasonable compensation for their provision of access, whether through tariff or by a division of revenues agreement).

> Order, the Commission stated that *cellular carriers are entitled to just and reasonable compensation for their provision of access*.[50]

Moreover, it would be unreasonably discriminatory in contravention of Section 202 and unjust and unreasonable in violation of Section 201 of the Act for IXCs to treat CMRS carriers less favorably than LECs (pay LECs for terminating IXC traffic but not pay CMRS providers for terminating IXC traffic).

The challenge the CMRS industry faces is more of a practical one: how can CMRS carriers recover their costs from IXCs? At one time, certain CMRS carriers filed exchange Access tariffs with the Commission, but in 1994 the Commission prohibited all CMRS carriers from filing tariffs, including Access charge tariffs.[51] Negotiating with IXCs is not promising, because they have no incentive to negotiate in good faith to change the *status quo* (given they have received free interconnection for years). In addition, given that there are over 700 IXCs,[52] the administrative costs that each CMRS carrier and IXC would incur in negotiating Access contracts with each other would be enormous.[53] In a related context involving CLEC Access charges, the Commission recognized "the attraction of a tariffed regime" because transaction costs for both IXCs and CLECs would "rise substantially if they were required to negotiate the terms on which they exchange access traffic."[54] The same analysis applies with equal force to the exchange Access services that CMRS carriers furnish.

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[50] *CMRS Equal Access/Interconnection*, 9 FCC Rcd 5408, 5447 ¶ 93 (1994)(emphasis added):

[51] *See* 47 C.F.R. § 20.15(c). The FCC, recognizing that "forbearance with respect to interstate access service [may be] inappropriate," stated that its access tariff prohibition would be "temporary" because it would reexamine the issue in the future. *See Second CMRS Order,* 9 FCC Rcd 1441, 1480 ¶ 179 (1994). However, the FCC never commenced this supplemental investigation.

[52] *See, e.g.,* Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service,* Table 10.4, Number of Toll Carriers (Dec. 21, 2000).

[53] *See, e.g.,* AT&T Comments, CC Docket No. 96-262, at 29-30 (Oct. 29, 1999)(permissive tariffing of CLEC access is more cost effective than negotiating individual access contracts).

[54] *Seventh Access Charge Reform Order,* CC Docket No. 96-262, FCC 01-146, at ¶ 42 (April 27, 2001).

VoiceStream therefore recommends that the Commission adopt for CMRS carriers an approach similar to what it has adopted for CLECs: like CLECs, CMRS providers may file Access tariffs but only so long as their Access rates do not exceed the Access charges imposed by the ILEC.[55]

However, this CLEC model should be modified in one respect. Studies have confirmed that CMRS carriers incur higher call termination costs than LECs,[56] and the Commission's local interconnection rules permit a CMRS carrier to base its call termination rates on its own costs (upon presentation of a supporting cost study).[57] The economic costs that a CMRS carrier incurs to terminate a call are the same, whether the call is an intraMTA or interMTA, intraBTA or interBTA call. Accordingly, while VoiceStream can accept a default presumption of symmetrical Access charges (CMRS rates are ordinarily limited to the rate charged by an ILEC), a CMRS carrier demonstrating its actual forward-looking costs of call termination for intraMTA traffic should be permitted to charge the same rate in providing Access services to IXCs for interMTA traffic.

Finally, in most instances IXCs deliver their toll traffic to CMRS carriers *via* the ILEC's tandem switch in the terminating LATA, similar to the way IXCs often deliver their toll traffic to smaller ILECs and CLECs in a LATA. The Commission should therefore order incumbent LECs providing this tandem switch function to execute with CMRS carriers joint Access charge arrangements that are comparable to the joint arrangements the tandem owner may have with other LECs. The Commission should also require that LECs provide a Meet-Point Billing serv-

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[55] *See Seventh Access Charge Reform Order,* CC Docket No. 96-262, FCC 01-146 (April 27, 2001). The FCC here adopted a transition plan for CLECs already providing access services that enables them to charge higher "benchmark" in these markets. However, this transition plan does not apply to new markets that CLECs enter, and the CMRS industry does not require a transition plan comparable to CLECs.

[56] *See* note … *supra.*

ice whenever their Access tandem switches are used in terminating IXC traffic so CMRS carriers have the information necessary to bill IXCs for providing the exchange Access service function to them. Unless CMRS carriers get their fair share of IXC Access payments, the ILEC reaps an undeserved windfall.

V. The Commission Should Adopt Reform One Step At a Time, and Not Defer Action Pending Development of the Elusive Perfect Solution

It is difficult to justify the complex and disparate regimes for intercarrier compensation that currently exist, whereby the applicable regime is often determined by a carrier's historic regulatory classification rather than on the function the carrier performs. The Commission's inquiry into the development of a unified regime for all intercarrier compensation is both appropriate and timely. However, there is no perfect solution. There is an appropriate adage, "Let not the perfect be the enemy of the good." The Commission has recognized in other contexts that it is "important . . . that the Commission not permit itself to be gridlocked into inactivity by endeavoring to find precise solutions to each component of this complex set of problems":

> It is preferable and more reasonable to take several steps in the right direction, even if incomplete, than to remain frozen with indecision because a perfect, ultimate solution remains outside our grasp.[58]

The Commission should adopt this common sense approach here. Meaningful reform of the current disparate arrangements governing intercarrier compensation will occur only if the Commission operates in steps, making one reform at a time. In contrast, waiting to act until the Commission devises the elusive, perfect and universal solution will only result in endless delay to meaningful reform. Appellate courts have affirmed the Commission's plenary authority over

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[57] *See* 47 C.F.R. § 51.711(b); *Intercarrier Compensation NPRM* at ¶ 104.

[58] *See CALLS Order*, 15 FCC Rcd 12962, 12973-74 ¶ 27 (2000). *See also ISP-Bound Traffic* Order at ¶ 94.

LEC-CMRS interconnection, and the Commission should begin to exercise this authority so as to achieve the "Federal regulatory framework" that Congress has commanded for the competitive CMRS industry. Moreover, the Commission can use its authority, here, to demonstrate the efficacy of bill-and-keep in advance of its application to other forms of interconnection.

VI. Conclusion

For all the foregoing reasons, VoiceStream respectfully requests that the Commission adopt a bill-and-keep regime for all LEC-CMRS interconnection of local traffic. In addition, regardless of the interconnection reforms that it may make, the Commission should adopt a truly Federal regulatory framework for all LEC-CMRS interconnection. Finally, the Commission should amend its rules to permit CMRS carriers to file Access tariffs so the current inequity — IXCs receiving free service — can be promptly remedied.

Respectfully submitted

VoiceStream Wireless Corporation

By: /s/ Brian O'Connor
Brian T. O'Connor, Vice President
Legislative and Regulatory Affairs

Robert Calaff, Corporate Counsel
Governmental and Regulatory Affairs

Dan Menser, Corporate Counsel
Regulatory Affairs

401 9th Street, N.W., Suite 550
Washington, D.C. 20004
202-654-5900

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